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10/534,555

06/27/2005

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7108

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7590

11/02/2007

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EXAMINER

GORDON, STEPHEN T

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

11/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,555

Applicant(s)

BAKER, MAURICE

Examiner

Stephen Gordon

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-29 is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The abstract of the disclosure is objected to because it contains the term "means" (i.e. legal phraseology) throughout. Correction is required. See MPEP § 608.01(b).

2. Claims 13-24, as newly amended/presented are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 as newly amended, "said pallet" in both lines 9 and 11 (2 places total) lacks clear antecedent basis as pallets per se are previously recited in line 1 and line 8.

Claim 15, note the terms "said pallet" on line 3 (2 places) and line 6 (i.e. 3 places total) lack clear antecedent basis in view of the confusing language noted above regarding base claim 13. Note similar confusing terms in claim 18 – line 4, claim 19 – line 3, and claim 21 – line 3, claim 22 – both lines 4 and 6.

Claim 21, the recited locking means on line 2 is confusing as it is not clear if/how such relates back to the locking means of the base claim. Such term appears to be a double inclusion of the locking means of claim 13.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 13-14, 18 and 24, as best understood and as newly amended/presented, are rejected under 35 U.S.C. 102(b) as being anticipated by Pavlik '826.

Note pallet 10, chassis 12,14+, locomotion means/rollers 40, and locking means 89,90+ as broadly claimed.

Regarding the newly added language to claim 13, the locking means is engagable to a container wall (e.g. a container bottom wall) or an adjacent pallet (e.g. a top side of a lower adjacent pallet) as newly broadly claimed and as best understood. Note also, in as much as a container or adjacent pallet per se are not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 14, note roller at 79,81.

Claim 18 note first locking means 89,90+ and second locking means 79+ as broadly claimed and as best understood. Note also element 106+ defines an additional locking means as broadly claimed. The locking means define a locking device as newly broadly claimed and as best understood.

Claim 24, the device is configured as newly broadly claimed and as best understood.

5. Claims 13-14, 18, 21, and 24, as best understood and as newly amended/presented, are rejected under 35 U.S.C. 102(b) as being anticipated by Seo '365.

Note pallet (figure 1 embodiment), locomotion means/lower rollers, and locking means (including the side rollers) as broadly claimed.

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Regarding the newly added language to claim 13, the locking means is engagable to a container wall or an adjacent pallet as newly broadly claimed and as best understood.

Note also, in as much as a container or adjacent pallet per se are not positively recited elements of the instant claimed combination, the functional/positional language relating thereto is given little patentable weight.

Claim 18, note the side rollers define second locking means and the element at reference 20 or 20' defines first locking means as broadly claimed. The locking means define a locking device as newly broadly claimed and as best understood.

Claim 21, the other element 20 or 20' on the trailing edge of the pallet reads on the locking device. Note extensible member 43+ is movable into close abutment as broadly claimed and as best understood. Note also, in as much as the rear door per se is not a positively recited element of the instant claimed combination, the functional /positional language relating thereto is given little patentable weight.

. Claim 24, the device is configured as newly broadly claimed and as best understood.

6. Claims 15-17, 19-20, and 22-23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Claims 25-29 are allowed.

8. Applicant's arguments filed 9-12-07 have been fully considered but they are not persuasive.

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Regarding applicant's comments directed to the Pavlik reference, the following should be noted. While it may be that the locking mechanism of Pavlik is attached to an underside of the pallet structure, such is deemed readable on the newly added language of claim 13 as best understood. It should be noted, in as much as multiple pallets are recited in new claim 13, it is not entirely clear as to which pallet (i.e. the pallet for use with a container or the adjacent pallet) the terms "the pallet" at the end of the claim refer – thus making application of the prior art difficult. Note a pallet "edge", as broadly defined, does not preclude a reading of the locking mechanism of Pavlik as being so located. Clearly the Pavlik locking mechanism is in an edge region, and no specific structure in the claim language precludes fairly reading the mechanism as being located at an "edge" as such.

Regarding applicant's comments directed toward the Seo reference, the following should be noted. To the extent that the relied upon locking means of Seo would serve at least to some degree to immobilize the pallet in certain directions, such is deemed fairly readable on the locking device as broadly recited and as best understood.

In general it should be noted, clearly applicant's invention *as disclosed* is different than the relied upon prior art patents. Moreover, applicant's newly amended claims 13+ as best understood appear to be *beginning* to move away from the teachings of the prior art and very likely toward additional patentable material beyond that which has already been indicated as allowable. The instant claims however, *as currently presented*,

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remain sufficiently broad that application of the prior art under 35USC section 102 as detailed above is deemed warranted.


9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen Gordon
Primary Examiner
Art Unit 3612

10/13/07

stg